



The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

APR 12 2016

Dear Chairman Upton:

Thank you for your continued interest in the Department of Health and Human Services' (HHS) implementation of the Affordable Care Act (ACA) and in particular, the Basic Health Program (BHP). We are further responding to your letters on this issue as well as a subpoena you sent to the Department regarding BHP dated March 29, 2016. Congress enacted the ACA to improve access to affordable health care. We are making progress on that goal and have reached the lowest levels of uninsured on record.

BHP provides more affordable coverage for low-income residents and improves continuity of care for people whose income fluctuates above and below Medicaid and Children's Health Insurance Program (CHIP) levels. Specifically, through BHP, states can provide coverage to individuals who do not qualify for Medicaid, CHIP, or other minimum essential coverage, and have income between 133 percent and 200 percent of the federal poverty level (FPL).

BHP is fully funded under the ACA. Funds for BHP are used to support coverage for low-income individuals who would have otherwise been eligible to have ACA subsidy payments made on their behalf for coverage from a qualified health plan through an Exchange and are drawn from the same appropriation. For the President's Budget, estimated BHP outlays are included in the account from which ACA subsidy payments are made, as BHP spending is in lieu of such subsidy payments.

For the past ten months, HHS has been working with the Committee to provide it with the information requested regarding the implementation of BHP. In our letter dated June 2, 2015, we answered the Committee's questions regarding the source of the appropriation for this program and provided data available to us regarding funding outlays under BHP and future funding estimates for BHP outlays.

On July 28, 2015, Ellen Murray, HHS's Assistant Secretary for Financial Resources, provided a briefing to Chairman Roskam and staff of both the Ways and Means and Energy and Commerce Committees regarding the process by which HHS implemented BHP consistent with §1331 of the ACA. Ms. Murray answered all of the questions posed to her regarding BHP. As Ms. Murray explained in her briefing, HHS relied upon standard budget execution processes to make available the funding appropriated under the ACA. As is standard following enactment of a law

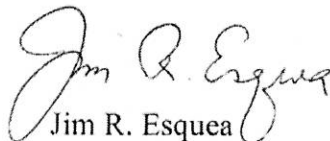
that contains appropriations, HHS worked with the Office of Management and Budget (OMB) to execute an apportionment of appropriated funds for the Basic Health Program.

On November 13, 2015, we provided a letter containing updated information regarding BHP outlays and produced a number of documents responsive to the Committee's request. We provided deliberative materials including the apportionments as well as the requested memorandum of understanding between HHS and the Department of Treasury related to BHP. The Executive Branch has a strong interest in reducing any potential chilling effect on internal deliberations regarding the budget process. We made limited redactions to some of those documents, which we understand to be consistent with the Executive Branch's practice across administrations. As a further accommodation, however, we made those documents available for your review in unredacted form *in camera* on February 5, 2016. In addition, on January 28, 2016, we provided additional documents, which contained information about the states' use of BHP.

Additional documents that the Committee has requested, including the Health Reform Tracker, drafts of the memorandum of understanding, and other documents and communications reflect internal deliberations regarding the budget process. As noted above, the Executive Branch has a strong interest in reducing any potential chilling effect on internal deliberations regarding the budget process. Nevertheless, as a further significant accommodation, we are providing the section of the Health Reform Tracker regarding BHP.

We recognize the important oversight role played by Congress and are committed to working with your Committee. Please do not hesitate to contact me or my staff if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jim R. Esquea". The signature is fluid and cursive, with the first name "Jim" being particularly prominent.

Jim R. Esquea
Assistant Secretary for Legislation

cc: The Honorable Frank Pallone
Ranking Member

Enclosures